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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KARL R. KENNEDY, DAVID HEIN, CHRISTOPHER D.
SPIELMAN, GREGORY F. BREAKY, and THOMAS J. FOWLER

Appeal 2009-005111
Application 10/717,078
Technology Center 2800

Decided: December 8, 2009

Before KENNETH W. HAIRSTON, JOSEPH F. RUGGIERO, and
ROBERT E. NAPPI, *Administrative Patent Judges*.

HAIRSTON, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1 to 3, 10 to 18, 20, and 21.¹ We have jurisdiction under 35 U.S.C. § 6(b).

¹ Claim 19 has been canceled. Claims 4 to 9 have been objected to by the

We affirm-in-part.

Appellants' invention is directed to an instrument panel system for use in a vehicle passenger compartment.

Claim 1, reproduced below with emphasis added to the claim limitations at issue in this appeal, is representative of the subject matter on appeal:

1. In a vehicle having a passenger compartment, an instrument panel system comprising:

an instrument panel;

a control panel attachable to the instrument panel, the control panel comprising a plurality of switches for use by an occupant in the passenger compartment to control at least one vehicle system;

an illumination source for selectively illuminating at least one of the plurality of switches, wherein each of the plurality of switches is visible to the occupant only when illuminated by the illumination source; and

a control module in communication with the control panel and the illumination source, the control module for selectively interfacing the control panel with the at least one vehicle systems to be controlled, and for *controlling the illumination source to selectively illuminate at least one of the plurality of switches based on the at least one of the plurality of vehicle systems to be controlled* [emphasis added].

The Examiner relies upon the following as evidence of unpatentability:

Ebine

US 5,987,793

Nov. 23, 1999

Examiner as being allowable if rewritten in independent form including all of the limitations of their base claims and any intervening claims.

Fukumoto	US 6,121,959	Sep. 19, 2000
Damiani	US 2002/0080043 A1	Jun. 27, 2002

The following rejections are before us for review:

(i) The Examiner rejected claims 1 to 3, 10 to 17, and 21 under 35 U.S.C. § 103(a) as being unpatentable over Ebine and Damiani.

(ii) The Examiner rejected claims 18 and 20 under 35 U.S.C. § 103(a) as being unpatentable over Ebine and Damiani, and further in view of Fukumoto.

The Examiner rejected all of the appealed claims 1 to 3, 10 to 18, 20, and 21 under 35 U.S.C. § 103(a) over the base combination of Ebine and Damiani. The Examiner relies on Ebine to show all of the features of an instrument panel system having a plurality of switches, except for the intended environment of a vehicle passenger compartment (*see* Ans. 3-5). Thus, the Examiner contends that the plurality of switches described by Ebine can be used in a vehicle (*see* Ans. 5). As to claims 18 and 20, the Examiner further relies upon Fukumoto to show the feature of switches including an audible actuation notification (*see* Ans. 6-7).

FINDINGS OF FACT

1. As indicated *supra*, Appellants describe and claim an instrument panel system for use by an occupant in a passenger compartment (Abstract; Spec. 1:4-5; claims 1 and 17; Fig. 1). The instrument panel system 10 includes an instrument panel 14, a control panel 40 having a plurality of switches 16 and 18 used to control a vehicle system, an

illumination source (42 and 44 in Fig. 2), and a control module 20 for controlling the illumination source 42/44 to “selectively illuminate” at least one of the plurality of switches 16, or at least one of the icons (54 and 56 in Fig. 2) on the switch (16 in Fig. 1, 18 in Fig. 2), based on the vehicle system to be controlled (Abstract; claims 1 and 17; Figs. 1 and 5).

2. Appellants describe the operation of the control module 20 as follows:

The control module 20 controls which icon 54, 56 and which switch 18 is illuminated. In this manner, the control module 20 can vary the display 18 and the function indicated by the display 18, as shown in Figures 2-4. In addition, the control module 20 is provided to be in communication with the switches 16 which are arranged together to form the control panel 40 and the illumination source 42, 44 to selectively interface the control panel 40 with a vehicle system to be controlled by the switch 16. The control module 20 can thus selectively control illumination of the illumination source 42, 44 based on the vehicle system to be controlled.

Spec. 7:1-8.

3. Appellants’ disclosed switches 16 and 18 are flush with the surface of instrument panel 14 “to conceal the switch[es] by providing a substantially uninterrupted appearance” (Spec. 2:10-11), and that the switches 16 and 18 are only visible to the occupant when illuminated by the illumination source 42/44 (Spec. 2:21-24).
4. Ebine describes an instrument panel system (Fig. 2A) including an instrument panel 20, a control panel 22, an illumination source such as

- an LED L, a plurality of switches 13, and a control module (not shown) for a video camera (col. 1, ll. 31-50). Ebine describes that when LED L is turned off, the display items 12 (i.e., icons) and operation keys 13 are hidden or rendered completely invisible (col. 4, l. 66 to col. 5, l. 19). And, when the LED L is turned on, the display items 12 become visible and the operation keys are operational (col. 5, ll. 15-19).
5. Damiani describes an instrument panel system for a passenger compartment 1 of a vehicle (Fig. 1) including a central control unit 16 (Fig. 2) and a display 4 for displaying display sectors (i.e., icons) 40, 42, 44, 46, 48 in three display regions 32, 34, and 36 (Figs. 1-3; Abstract; ¶¶ [0022]-[0030]). The system also includes a separate selection device 8 which is composed of control buttons 20, selection buttons 72, 74, 76, 78, and activating button 70 (Fig. 8). In Damiani, plural icons and associated vehicle systems are controlled using one or more selection buttons (i.e., switches), and individual selection buttons can operate different plural functions of the vehicle (¶¶ [0006], [0019], [0025]; Abstract).

ISSUES

First Issue: Claims 1 to 3, 10 to 14, 16 to 18, and 20

Independent claim 1, as well as each of claims 2, 3, 10 to 14, 16 to 18, and 20 which ultimately depend therefrom, recite a control module “for

controlling the illumination source to selectively illuminate at least one of the plurality of switches based on the at least one of the plurality of vehicle systems” (*see supra* claim 1). Independent claim 17, as well as claims 18 to 20 which depend therefrom, recite “for controlling the illumination source to selectively illuminate at least one of the plurality of *icons* based on the at least one of the plurality of vehicle systems” (*see* claim 17 (emphasis added)). Thus, claims 1 and 17 share the common feature of selective illumination based on the vehicle system controlled by the control panel of the instrument panel system.

With regard to claims 1 and 17, Appellants argue (Br. 7-8) that Ebine is non-analogous art. Appellants also argue (Br. 9-10) that Ebine and Damiani are improperly combined because Ebine is limited to associating a single operation with each button, and in Damiani the same button may control different vehicle systems. Lastly, Appellants argue (Br. 10-12) that Ebine and Damiani, whether taken individually or in combination, “fail to teach a control module that selectively illuminates switches and controls different vehicle systems as a function of switch illumination” (Br. 11).

Accordingly, the first issue is: Have Appellants demonstrated that the Examiner erred in determining that Ebine and Damiani teach or suggest a control module “for controlling the illumination source to selectively illuminate at least one of the plurality of switches [or icons as in claim 17] based on the at least one of the plurality of vehicle systems,” as set forth in each of claims 1 and 17 on appeal?

Second Issue: Claims 15 and 21

Claim 15 ultimately depends from claim 1 and recites, “wherein the at least one icon comprises a plurality of icons, each of the plurality of icons associated with one of a plurality of vehicle systems” (*see* claim 15). Claim 21 depends from claim 17 and recites, “wherein at least two icons are associated with each switch and the control module controls which of the at least two icons is illuminated and the vehicle system controlled as function thereof” (claim 21).

With regard to claims 15 and 21, Appellants argue (Br. 12) that Ebine and Damiani, whether taken individually or in combination, fail to teach or suggest using multiple icons for one or more of the switches, separately illuminating the icons, and controlling more than one vehicle system with a single switch.

Thus, the second issue is: Have Appellants shown that the Examiner erred in determining that Ebine and Damiani teach or suggest (i) a plurality of icons each associated with a vehicle system as set forth in claim 15, and (ii) at least two icons associated with each switch, and the control module selectively controlling illumination of an icon and the vehicle system which the icon controls, as set forth in claim 21?

PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). The

Examiner's articulated reasoning in the rejection must possess a rational underpinning to support the legal conclusion of obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

The Examiner bears the initial burden of presenting a prima facie case of obviousness, and Appellants have the burden of presenting a rebuttal to the prima facie case. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See Kahn*, 441 F.3d at 985-86.

ANALYSIS

First Issue: Claims 1 to 3, 10 to 14, 16 to 18, and 20

As discussed *supra*, independent claims 1 and 17 share the common feature of selective illumination based on the vehicle system controlled by the control panel of the instrument panel system. Dependent claims 2, 3, 10 to 14, 16, 18, and 20 contain further limiting features, yet also share the feature common to claims 1 and 17.

Appellants' contentions with regard to claims 1 and 17, that Ebine is non-analogous (Br. 7-8) and that Ebine and Damiani are improperly combined (Br. 9-10), are unconvincing in light of our findings that both Ebine and Damiani are concerned with switches. One of ordinary skill in the art concerned with the problem of making a better switch for a vehicle environment would look to the teachings of switch controlling systems of all kinds, not just vehicle switch systems. *See In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004) (where the Federal Circuit affirmed the Board's

determination that a tooth brush was analogous art, and in the same field of endeavor, as a hair brush based on their structural similarities). Therefore, since both Ebine and Appellants' invention are structurally and functionally similar (i.e., they both concern switches), we see no error in the Examiner relying on Ebine which is concerned with concealed switches for a video camera.

Furthermore, the Examiner relies upon Ebine as disclosing the "selective illumination" feature, and only relies upon Damiani for a vehicle environment. In keeping with Appellants' description of "selective illumination" in the Specification (*see* FF 2), one of ordinary skill in the art at the time of Appellants' invention would understand "selective illumination" to broadly encompass Ebine's illumination control where all of the icons and switches are turned on or off (FF 4). Although we agree with Appellants (Br. 11) that Ebine only associates a single operation with each switch, claims 1 and 17 on appeal do not require multiple operations per switch. Appellants do not claim, nor define in the Specification, that selective illumination requires that some icons be illuminated while others are not. Accordingly, we are not persuaded by Appellants' assertions (Br. 11) that Ebine fails to disclose a control module that *selectively illuminates* switches or icons, or that Ebine modified with Damiani's vehicle environment fails to teach selectively illuminating switches and controlling vehicle systems as a function of illumination.

In view of the teachings of the references (*see* FF 4, 5), as well as the factual bases set out by the Examiner (*see* Ans. 3-12), we agree with the

Examiner (*see* Ans. 5, 8-11) that it would have been obvious to the ordinarily skilled artisan to utilize the teachings of Ebine in a vehicle system as taught by Damiani. *Fine*, 837 F.2d at 1073. The combined teachings of Ebine and Damiani would provide an improved and simplified instrument panel in a vehicle (*see* Ans. 5).

The Examiner has provided articulated reasoning with a rational underpinning to support the combination for the legal conclusion of obviousness (*see* Ans. 3-12). *See Kahn*, 441 F.3d at 988. Appellants' arguments have not persuaded us of error in the Examiner's rejection of claims 1 to 3, 10 to 14, 16, and 17 under 35 U.S.C. § 103(a) as being unpatentable over Ebine and Damiani, since the phrase "selectively" broadly encompasses the illumination control described by Ebine (*see* claims 1 and 17). *Oetiker*, 977 F.2d at 1445. Because Appellants have not demonstrated that the Examiner erred in determining that (i) Ebine controls the illumination source LED L to selectively illuminate at least one of a plurality of switches or icons based on the at least one of the plurality of vehicle systems of Damiani, and (ii) the combination of Ebine and Damiani is proper and discloses or suggests all of the limitations as set forth in claims 1 and 17, we will sustain the Examiner's rejection of these claims.

Appellants do not separately argue with particularity the limitations of claims 2, 3, 10 to 14, 16, 18, and 20 apart from merely asserting that these claims depend on claims 1 and 17, respectively, and should be allowed for at least this reason (Br. 7-13). Such conclusory assertions without supporting explanation or analysis particularly pointing out errors in the Examiner's

reasoning fall well short of persuasively rebutting the Examiner's prima facie case of obviousness. *See Oetiker*, 977 F.2d at 1445. We therefore sustain the Examiner's rejections of claims 2, 3, 10 to 14, 16, 18 and 20 for the reasons indicated previously with respect to claims 1 and 17.

For the foregoing reasons, we will sustain the Examiner's rejection of claims 1 to 3, 10 to 14, 16, and 17 over Ebine and Damiani, and the Examiner's rejection of claims 18 and 20 over Ebine, Damiani, and Fukumoto.

Second Issue: Claims 15 and 21

Turning next to the obviousness rejections of claims 15 and 21 over Ebine and Damiani, we find that the Examiner erred in rejecting these claims based on the determination that Ebine teaches or suggests (i) a plurality of icons, each associated with a vehicle system (claim 15), and (ii) at least two icons associated with each switch, and the control module selectively controlling illumination of an icon and a vehicle system which the icon controls (claim 21).²

Ebine and Damiani, whether taken individually or in combination, fail to teach or suggest plural icons on a single switch where each icon is associated with, or controls, a vehicle system (*see* FF 4, 5). Ebine, cited by

² The Examiner relies upon Ebine as teaching the features of claims 15 and 21 (*see* Ans. 6), as well as teaching all of the features of claims 1 and 14, from which claim 15 depends (Ans. 3-4). The Examiner relies upon Damiani as teaching that a plurality of switches can be used in a vehicle system (Ans. 4), and that a control module can be used to control switches and selectively interface a control panel with different vehicle operation functions (Ans. 12).

the Examiner as disclosing these features (Ans. 3-6), only shows plural switches (e.g., play, rewind, fast forward, etc.) which each have a single icon associated therewith (FF 4). Damiani, also cited by the Examiner as disclosing these features (Ans. 11), only discloses switches (selection device 8 and buttons 20, 70, 72, 74, 76, 78) in a completely separate area of the control panel from the icons (40, 42, 44, 46, 48) in different display regions 32, 34, and 36 of the display area 4 (FF 5). Accordingly, Appellants' argument (Br. 12) that neither Ebine nor Damiani teaches or suggests buttons (i.e., switches) having multiple icons, let alone selectively illumination individual icons so arranged on the switches, is convincing.

The Examiner's rejection is deficient since at least one limitation (i.e., associating plural of icons with a single switch and a particular vehicle system as in claim 15, and associating at least two icons with each switch as in claim 21) is neither taught nor suggested by the combination of Ebine and Damiani.

Appellants' burden of demonstrating error in the Examiner's rejection with regard to claims 15 to 21 has been met. *See Kahn*, 441 F.3d at 985-86. Appellants' arguments have persuaded us that the Examiner erred in rejecting claims 15 and 21 because the combination of Ebine and Damiani fails to teach or suggest (i) a plurality of icons, each associated with a vehicle system (claim 15), and (ii) at least two icons associated with each switch, and the control module selectively controlling illumination of an icon and a vehicle system which the icon controls (claim 21). We will not sustain the Examiner's rejection of claims 15 and 21.

CONCLUSIONS OF LAW

First Issue: Claims 1 to 3, 10 to 14, 16 to 18, and 20

Appellants have not shown that the Examiner erred in determining that Ebine and Damiani teach or suggest a control module “for controlling the illumination source to selectively illuminate at least one of the plurality of switches [or icons as in claim 17] based on the at least one of the plurality of vehicle systems,” as set forth in each of claims 1 and 17 on appeal.

Second Issue: Claims 15 and 21

Appellants have adequately shown that the Examiner erred in determining that Ebine and Damiani teach or suggest (i) a plurality of icons each associated with a vehicle system as set forth in claim 15, and (ii) at least two icons associated with each switch, and the control module selectively controlling illumination of an icon and the vehicle system which the icon controls, as set forth in claim 21.

ORDER

The decision of the Examiner rejecting claims 1 to 3, 10 to 14, 16 to 18, and 20 is affirmed. The decision of the Examiner rejecting claims 15 and 21 is reversed. Accordingly, the decision of the Examiner is affirmed-in-part.

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Application 10/717,078

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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